

1 Aaron D. Ford
2 *Attorney General*
3 Daniel P. Nubel (Bar No. 13553)
4 *Deputy Attorney General*
5 OFFICE OF THE NEVADA ATTORNEY GENERAL
6 100 N. Carson Street
7 Carson City, Nevada 89701
8 T: 775.684.1225
9 E. DNubel@ag.nv.gov

10 James J. Pisanelli., Bar No. 4027
11 Todd L. Bice, Bar No. 4534
12 Jordan T. Smith, Bar No. 12097
13 Emily Buchwald, Bar No. 13442
14 PISANELLI BICE PLLC
15 400 South 7th Street, Suite 300
16 Las Vegas, Nevada 89101
17 T: 702.214.2100
18 E. JTS@pisanellibice.com
19 *Special Deputy Attorneys General*

20 Martin G. Malsch, Esq.
21 EGAN, FITZPATRICK, MALSCH & LAWRENCE, PLLC
22 1776 K Street N.W., Suite 200
23 Washington, D.C. 20006
24 T: (202) 466-3106
25 E: mmalsch@nuclearlawyer.com
26 *Special Deputy Attorneys General*

27 *Attorneys for the State of Nevada*

28 **UNITED STATES DISTRICT COURT**

DISTRICT OF NEVADA

STATE OF NEVADA,
Plaintiff,

v.

UNITED STATES, ET AL.,
Defendants,

and

STATE OF SOUTH CAROLINA,
Intervenor-Defendant.

Case No.: 3:18-cv-569-MMD-CBC

**SECOND STIPULATION AND ORDER
REGARDING REINSTATED MOTIONS**

1 Plaintiff State of Nevada and the United States Defendants, by and through their
2 respective undersigned counsel of record, hereby stipulate and agree as follows:

3 1. On April 30, 2019, the Court denied certain motions as moot after staying the case
4 following Nevada's interlocutory appeal from the denial of its motion for preliminary injunction.
5 (ECF No. 112.) The Court stated: "All remaining pending motions (ECF Nos. 88, 92, 93, 108) are
6 denied as moot and without prejudice to the moving parties to request that the motion, if fully
7 briefed, be reinstated, or to filing a renewed motion within 14 days from the Ninth Circuit's
8 decision on Nevada's interlocutory appeal."

9 2. On August 15, 2019, after the Ninth Circuit dismissed Nevada's appeal as moot,
10 Nevada filed a Motion to Lift District Court Stay and Motion to Establish Briefing Schedule.
11 (ECF No. 116.) Nevada requested that the Court lift the previously imposed stay, set a briefing
12 schedule on Nevada's request to amend its complaint, and stay the 14-day deadline to renew or
13 reinstate the motions previously denied as moot.

14 3. On August 20, 2019, the Court entered an order lifting the stay and established a
15 briefing schedule on the motion for leave to amend, but still allowed all parties, if they chose, to
16 have certain motions renewed or reinstated sooner. (ECF No. 118.) The Court explained that it
17 was "permitting the parties to choose the route that is most efficacious for them in either
18 reinstating or renewing the motions the court relevantly denied as moot per the April order." The
19 Court "ordered that the parties who filed motions that were denied without prejudice when the
20 Court imposed the stay may (1) elect to seek reinstatement of the prior motions within 14 days
21 from the date of this order or (2) file renewed motions within 14 days from the Court's ruling on
22 Nevada's motion for leave to amend its Complaint."

23 4. On August 21, 2019, the United States Defendants filed a Notice of Reinstatement
24 of Motions for Protective Order (ECF No. 92) and Motion to Dismiss (ECF No. 93).
25 (ECF No. 120.) The United States "request[ed], however, that any hearing or ruling on these
26 Motions be delayed until either 1) the Court's August 30 deadline for filing a motion for leave to
27 amend the complaint expires without filing of any motion or 2) the Court has a chance to rule on
28

1 any motion to amend the complaint.” The Court granted the request to reinstate on August 23,
2 2019. (ECF No. 122).

3 5. Nevada reinstated its Countermotion to Conduct Discovery on September 3, 2019.
4 (ECF No. 129.) The Honorable Carla Baldwin Carry, U.S. Magistrate Judge, granted Nevada’s
5 request to reinstate its countermotion for leave to conduct discovery on October 3, 2019.
6 (ECF No. 133.)

7 6. In the meantime, the parties stipulated that judicial economy will be served if the
8 Court extended Nevada’s deadline to file any response to the United States’ reinstated Motion for
9 Protective Order (ECF Nos. 92, 120) and reinstated Motion to Dismiss (ECF Nos. 93, 120) until
10 14 days after the Court rules on Nevada’s forthcoming motion to amend the complaint.
11 (ECF No. 127.)

12 7. The parties also stipulated to extend the United States’ deadline to file any
13 response to Nevada’s Countermotion for Leave to Conduct Discovery until 14 days after the
14 Court rules on Nevada’s forthcoming motion to amend the complaint. (*Id.*).

15 8. The Court entered an order on the parties’ stipulation on September 3, 2019.
16 (ECF No. 130.)

17 9. On October 21, 2019, the Court granted Nevada’s Motion for Leave to File an
18 Amended Complaint, in part, allowing Nevada to request removal of the plutonium and assert a
19 cause of action for common law nuisance. (ECF No. 126.)

20 10. Following the Court’s ruling on Nevada’s Motion for Leave to Amend, Nevada
21 and the United States have met and conferred. The parties agree that judicial economy will be
22 served by withdrawing all pending reinstated motions and countermotions, including the
23 United States’ Motions for Protective Order, Motion to Dismiss, (ECF Nos. 92, 93, 120), and
24 Nevada’s Countermotion to Conduct Discovery. (ECF Nos. 108, 129.) By withdrawing these
25 motions, the parties do not waive any arguments or rights.

26 11. Nevada will re-serve its discovery requests and the United States will respond as
27 necessary.
28

1 12. The United States intends to file a motion to dismiss Nevada's Amended
2 Complaint. The parties have agreed to the following briefing scheduled:

- 3 a. The United States shall file its motion to dismiss on or before
4 November 15, 2019;
- 5 b. Nevada shall file its response to the motion to dismiss on or before
6 December 9, 2019;
- 7 c. The United States shall file any reply in support of the motion on or before
8 December 23, 2019.

9 13. The parties agree that the foregoing stipulation will conserve judicial resources and
10 streamline the litigation.

11 14. By entering into this stipulation, the parties do not waive any arguments or rights.

12 DATED this 25th day of October 2019.

DATED this 25th day of October 2019.

13 By: /s/ Jordan T. Smith
14 James J. Pisanelli., Bar No. 4027
15 Todd L. Bice, Bar No. 4534
16 Jordan T. Smith, Bar No. 12097
17 PISANELLI BICE PLLC
18 400 South 7th Street, Suite 300
19 Las Vegas, Nevada 89101

Attorneys for the State of Nevada

By: /s/ David Negri
Jean E. Williams
David L. Negri
U.S. Department of Justice
Environment & Natural Resources Div.
c/o U.S. Attorney's Office
800 Park Blvd., #600
Boise, Idaho 83712
Attorneys for the United States

IT IS SO ORDERED.


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

DATED: October 25, 2019